

**To:** Hohl, M. Zack[ZHohl@Graydon.law]  
**Cc:** 'Port, Gail S.'[GPort@proskauer.com]; 'Goldenberg, Evan'[egoldenberg@whitecase.com]; 'Kerschner, Seth'[seth.kerschner@whitecase.com]; 'Thomas Spiesman'[tspiesman@pbnlaw.com]; La Jeunesse, Richard T.[RLaJeunesse@Graydon.law]; Cinamon, Aliza R.[ACinamon@proskauer.com]; Flanagan, Sarah[Flanagan.Sarah@epa.gov]  
**From:** Fajardo, Juan  
**Sent:** Thur 4/13/2017 12:51:28 PM  
**Subject:** RE: LPRSA Cash Out Settlement Offer [IWOV-CN.FID107091]

Zack –

Thank you for the timely comments. We will consider the comments and request for a meeting and get back to you as soon as possible. However, note the following:

- 1) The settlement amount is \$280,600;
- 2) The settlement is limited to OU2; and
- 3) The settlement does not cover natural resource damages.

If a party is not willing or able to enter into a cash out settlement agreement under those conditions, please let me know so that we can remove such party from further early cash out consideration.

Sincerely,

Juan M. Fajardo

Assistant Regional Counsel

212 637-3132

**From:** Hohl, M. Zack [mailto:ZHohl@Graydon.law]  
**Sent:** Wednesday, April 12, 2017 6:18 PM  
**To:** Fajardo, Juan <Fajardo.Juan@epa.gov>

**Cc:** 'Port, Gail S.' <GPort@proskauer.com>; 'Goldenberg, Evan' <egoldenberg@whitecase.com>; 'Kerschner, Seth' <seth.kerschner@whitecase.com>; 'Thomas Spiesman' <tspiesman@pbnlaw.com>; La Jeunesse, Richard T. <RLaJeunesse@Graydon.law>; Cinamon, Aliza R. <ACinamon@proskauer.com>  
**Subject:** LPRSA Cash Out Settlement Offer [IWOV-CN.FID107091]

SETTLEMENT CONFIDENTIAL – FRE RULE 408

Juan,

Thank you for speaking with me Tuesday afternoon. As you know we represent Kao USA Inc. with respect to the Passaic River matter.

After receiving EPA's 3/30/2017 letter regarding Offer of Cash Out Settlement at the Diamond Alkali Superfund Site, we teleconferenced with counsel for four other cash-out settlement offer recipients, including: Flexon Industries Corp.; Pfizer Inc.; Teva Pharmaceuticals USA, Inc.; and Wyeth.

Attached please find a revised Settlement Agreement and a redline showing our collective comments/revisions to the Settlement Agreement. (Please note that this DRAFT Settlement Agreement is being provided in connection with settlement discussions and should be kept confidential under FRE Rule 408.)

While each of the parties identified above are seriously considering EPA's settlement offer, before we can move forward we need to discuss (among other things identified in the mark-up) the following important matters: (i) the scope of the settlement; (ii) the amount of the settlement payment; (iii) the implications this settlement will have on the ongoing Tierra and Maxus bankruptcy proceedings; (iv) the need to update or supplement statutory references in the Settlement Agreement to reflect the intent of the parties; (v) clerical revisions to the Settlement Agreement and internal cross-references within the agreement; and (vi) the need to avoid inconsistencies with obligations related to, for example, record-keeping and confidentiality, contained in other LPRSA consent decrees or settlement agreements applicable to our respective clients.

In light of the dozen plus year duration of this matter, the substantial amounts already contributed by our respective clients to the Remedial Investigation and Feasibility Study of the 17-mile LPRSA, the River Mile 10.9 remediation activities, and numerous other LPRSA matters, a meeting with EPA to discuss our clients' concerns is critically important at this juncture.

Given the very short time frame set forth in EPA's 3/30/2017 letter, we will certainly endeavor to accommodate your and your team's availability schedule so we can meet to discuss and resolve these issues as soon as practicable.

Please provide us with a few dates for a meeting.

Thanks,

Zack

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